

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court’s order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 559/04 (M/S)

Ganga Sabha, Haridwar

Vs

A.D.J. Haridwar and others.

Approved for reporting

~~Not Approved for Reporting~~

Date of decision 23/08/04.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 559 of 2004

Ganga Sabha, Haridwar Petitioner

Versus

Addl. District & Sessions Judge, Haridwar
& others Respondents

Writ Petition No. 568 of 2004

Ganga Sabha, Haridwar Petitioner

Versus

Addl. District & Sessions Judge, Haridwar
& others Respondents

Writ Petition No. 569 of 2004

Ganga Sabha, Haridwar Petitioner

Versus

Addl. District & Sessions Judge, Haridwar
& others Respondents

Sri Sharad Sharma, Advocate for the petitioner
Sri Pankaj Miglani, Advocate for the respondent no.3.

Dated: 23.8.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties at length.

By the present writ petitions the petitioner has prayed for a writ of certiorari quashing the order dated 8.3.2004 and 3.4.2001 passed by the respondents no. 1 and 2.

Briefly stated the respondents Hem Chand, Arun Kumar and Surendra Kumar have filed original Suits No.201 of 2002,, 202 of 2002 and 200 of 2002 in the Court of Civil Judge (JD), Haridwar for perpetual injunction restraining the petitioner from interfering in his functioning as a Purohit over the property i.e. one Takhat No. 9 area 6"x6" situated in Malviya Ghat, Haridwar. Along with his plaint the respondent also filed application for temporary injunction under Order 39 Rule 1 and 2 C.P.C. the same was contested by the petitioner. However, injunction was granted in favour of the respondent no.4 vide order dated 3.11.2001. Aggrieved by that order, the petitioner preferred appeals, which were dismissed and the order passed by the trial court was confirmed.

In view of the fact that both the Courts below have found prima facie case, balance of convenience, and irreparable loss in favour of the respondents and have recorded concurrent findings, no interference can be made under Article 226/227 of the Constitution of India, in view of the observations made by the Apex Court in Surya Dev Rai Vs. ram Chander, 2003 SCC (6) 675, the Apex Court has held as under: -

"Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave

injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirement are satisfied: (1) The error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Case, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions in sought to be invoked during the pendency of any suit or correction is yet capable of being corrected at the conclusion of the proceedings is an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and or early disposal of the suit of proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that every moment, may become incapable of correction at a later stage

and refused to intervene would result in stravesty of justice or where such refusal itself would result in prolonging of the lis.

The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.”

In view of the observations of the Apex Court, order passed by the two Courts below cannot be interred under Article 227 of the Constitution of India and the writ petitions deserve to be dismissed. However, the trial Court is directed to decide the suits itself, within a period of four months after the receipt of the certified copy of this order.

Subject to the aforesaid observation, the writ petitions are dismissed. No order as to costs.

(Rajesh Tandon J.)

23.8.2004

*Dhyani